

REMARKS

This responds to the non-final Office Action dated 22 October 2008. Applicants thank the Examiner for allowing claims 1-5, 7-27 and 47-54, and for recognizing claims 28-30, 32 and 43 as containing allowable subject matter.

Claims 28, 32 and 43 have been amended to address formality issues. Claim 45 has been amended and is supported by at least FIGS. 2A and 2B of the present application. Accordingly, claims 1-5, 7-33, 37-40, 42-43, and 45-54 are presently pending in the application, each of which Applicants believe is in condition for allowance. Applicants respectfully request reexamination and reconsideration in light of the above amendments and the following remarks.

Claim Rejections – 35 U.S.C. § 112

Claims 28-30, 32 and 43 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. The phrase “as seen from an end view” in claims 28 and 32 has been replaced with the phrase “wherein each fold is aligned substantially parallel with a longitudinal axis of the sealing plug.” as suggested by the Examiner. The phrase “the X-shaped sealing plug” in claim 43 has been replaced with “the X-shaped cross section,” as suggested by the Examiner. Applicants submit that claims 28-30, 32 and 43 are now definite.

Claim Rejections – 35 U.S.C. § 102

In the Action, the Examiner rejected claims 31 and 33 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,531,759 to Kensey et al. (“Kensey”). Applicants respectfully traverse this rejection.

Independent claim 31 recites “an anchor disposed inside the insertion sheath at the first end thereof, the anchor being disposed outside of the carrier tube at the first end thereof, wherein a portion of the anchor is positioned radially adjacent to an outer diameter of the carrier tube.” The Examiner has interpreted the limitation “radially adjacent to” to mean “near to.” See paragraph 4 at page 3 of the Office Action. The Examiner contends that “a portion of the anchoring member 38 disclosed by Kensey is positioned radially adjacent to (*i.e.*, near to) an outer diameter of the carrier tube [32].” Applicants respectfully disagree with the Examiner’s interpretation of the claim terms “radially adjacent to” and the application of the Kensey reference.

Claim 31 requires a portion of the anchor to be disposed in a radial direction relative to “an outer diameter of the carrier tube” and also disposed “adjacent to an outer diameter of the carrier tube.” An example of this orientation of the portion of the anchor 114 relative to a nest portion 126 of the carrier tube 106 is shown in FIG. 1B of the present application.

Kensey fails to disclose, teach, or even suggest an anchor disposed inside an insertion sheath and outside of a carrier tube, wherein a portion of the anchor is positioned radially adjacent to an outer diameter of the carrier tube. The anchoring member 38 disclosed by Kensey is either positioned entirely within the deployment instrument 32 and disposed at a location spaced radially inward relative to an inner diameter surface of the deployment instrument 32 (*see* FIG. 1), or positioned outside of the deployment instrument and spaced distally in an axial direction relative to the deployment instrument 32. *See* FIG. 2. At no time either prior to, during, or after deployment of the anchoring member 38 from the deployment instrument 32 is an portion of the anchoring member 38 “positioned radially adjacent to an outer diameter” of the

deployment instrument 32. Therefore, Kensey fails to disclose every limitation of claim 31 and the claims that depend from it. Applicants respectfully request that the rejection of claims 31 and 33 under 35 U.S.C. § 102 be withdrawn, and these claims be allowed.

Claim Rejections – 35 U.S.C. § 103

In the Action, the Examiner rejected claims 31, 37-40, 42, 45 and 46 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,508,828 to Akerfeldt et al. Applicants respectfully traverse this rejection.

Independent claims 31, 37 and 42 recite “a portion of the anchor is positioned radially adjacent to an outer diameter of the carrier tube.” The limitation “adjacent to” in claim 31 is modified by the term “radially.” As such, a portion of the anchor is disposed in a radial direction relative to “an outer diameter of the carrier tube.”

Similar to Kensey, Akerfeldt fails to disclose or suggest an orientation of a first sealing member 2 relative to a pusher 22 or an introducer 24 that meets the limitations of claims 31, 37 and 42. The sealing member 2 is shown in FIGS. 8 and 10 of Akerfeldt positioned entirely within the introducer 24 in an orientation that is spaced radially inward relative to an inner diameter surface of the introducer 24, and spaced distally in an axial direction relative to the pusher 22. FIG. 11 of Akerfeldt shows the sealing member 2 positioned outside of the introducer 24 and spaced distally in an axial direction relative to the introducer 24 and pusher 22. At no time either prior to, during, or after deployment of the sealing member 2 from the introducer 24 is an portion of the sealing member “positioned radially adjacent to an outer diameter” of the

introducer 24 or pusher 22. Therefore, Kensey fails to disclose or suggest every limitation of claims 31, 37, and 42, and the claims that depend from them.

Claim 45 recites “a sealing plug that is generally V-shaped when the sealing plug is open, laid out flat, and unfolded.” In contrast, Akerfeldt discloses an elongated core 18 having no particular shape either prior to or after assembly in the introducer 24 (*see* FIG. 8), or after deployment (*see* FIGS. 11-17). The elongated core 18 in Akerfeldt is merely a thickened portion of suture 12 in which additional material fills an interior portion of suture 12. *See, e.g.*, col. 4, line 66-67 (“a hollow core of the suture wire 12 is filled with an elongated core 18”). The elongated core 18 is shown in a generally U-shaped or V-shaped configuration when threaded through the first sealing member 2. *See* FIGS. 15-17. However, if the elongated core 18 were “laid out flat” and “unfolded” as compared to the orientation shown in FIGS. 15-17, the elongated core 18 would merely be an elongated, straight member that could not reasonably be considered “V-shaped.” Therefore, Applicants submit that Akerfeldt fails to disclose or render obvious every limitation of claim 45 and the claims that depend from it.

In view of the foregoing, Applicants submit that independent claims 31, 37, 42 and 45 are in condition for allowance. Applicants therefore respectfully request that the rejection of these claims under 35 U.S.C. § 103 be withdrawn, and these claims be allowed.

Moreover, aside from the novel limitations recited therein, claims 38-40 and 46 are also allowable at least by virtue of their dependency upon allowable base claims 37 and 45. Applicants respectfully request, therefore, that the rejection of claims 38-40 and 46 under 35 U.S.C. § 103 be withdrawn, and these claims be allowed.

Conclusion

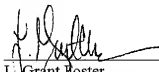
For at least the foregoing reasons, Applicants believe that each of the presently pending claims in this application is in immediate condition for allowance. Accordingly, Applicants respectfully request a favorable action on the merits. If there remain any unresolved issues, Applicants invite the Examiner to telephone the undersigned attorney to expedite the handling of this matter.

Applicants expressly disclaim all arguments, representations, and/or amendments presented or contained in any other patent or patent application, including any patents or patent applications claimed for priority purposes by the present application or any patents or patent applications that claim priority to this patent application. Moreover, all arguments, representations, and/or amendments presented or contained in the present patent application are only applicable to the present patent application and should not be considered when evaluating any other patent or patent application.

Respectfully submitted,

Dated:

22 JANUARY 2009



L. Grant Foster

Registration No. 33,236